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DISTRICT IV

May 21, 2014

To:

Hon. Richard O. Wright
Circuit Court Judge
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You are hereby notified that the Court has entered the following opinion and order:

2013AP812

In the estate of William G. Wenkman: Anne Beard v. Estate of
William G. Wenkman (L.C. # 2010PR98)

Before Blanchard, P.J., Sherman and Kloppenburg, JJ.

Anne Beard and Gregory Wenkman appeal a judgment imposing statutory costs of \$1729.79 against them in a probate proceeding. They argue that the prevailing parties, the Estate and personal representative, forfeited their right to costs because they failed to perfect the judgment within thirty days of entry as required by WIS. STAT. § 806.06(4) (2011-12).¹ Upon our review of the parties' briefs and the record, we conclude at conference that the judgment should be summarily affirmed because the issue was not properly preserved for appeal.

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

An issue that was not presented to the circuit court will not be considered for the first time on appeal. *Shadley v. Lloyds of London*, 2009 WI App 165, ¶25, 322 Wis. 2d 189, 776 N.W.2d 838. The record on appeal does not show that the circuit court was asked to deny costs based on the prevailing parties' failure to timely request costs. If the appellants rely on an oral objection, they must produce a transcript to establish that the issue was properly preserved and to show the circuit court's rationale for imposing costs. It is the appellants' obligation to ensure that the transcripts are made a part of the record. See *Fiumefreddo v. McLean*, 174 Wis. 2d 10, 26-27, 496 N.W.2d 226 (Ct. App. 1993). The appellants did not order any transcripts for this appeal. In addition, their failure to properly preserve the issue was raised in the respondents' brief and the appellants did not file a reply brief, in effect conceding the point. See *Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979).

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals